

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

USDC SDNY
DOCUMENT
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DATE FILED: 4/19/16

ALDO VERA, JR., as Personal Representative
of the Estate of Aldo Vera, Sr.,

Plaintiff,

vs.

THE REPUBLIC OF CUBA,

Defendant.

12 Civ. 1596 (AKH)

ALDO VERA, JR., as Personal Representative
of the Estate of Aldo Vera, Sr., et al.,

Petitioners,

vs.

BANCO BILBAO VIZCAYA ARGENTARIA (S.A.), et al.,

Respondents/Garnishees.

~~PROPOSED~~
**ORDER AND
JUDGMENT
OF CIVIL
CONTEMPT**

WHEREAS, on November 26, 2012, Plaintiff Aldo Vera, Jr. ("Vera") mailed an Information Subpoena (the "Subpoena") to the New York branch of Banco Bilbao Vizcaya Argentaria, S.A. ("BBVA"), seeking information, to be "obtained from New York and world-wide branches" of BBVA, concerning assets in which Cuba may have an interest; and

WHEREAS, BBVA responded to the Subpoena by providing information concerning Cuba-related assets (blocked accounts) held at BBVA's New York branch; and

WHEREAS, Vera moved to compel the production of information regarding Cuba-related assets that BBVA may hold worldwide, and

WHEREAS, BBVA cross-moved to quash the Subpoena and for a protective order; and

WHEREAS, on September 10, 2014, this Court granted Vera's motion and denied BBVA's cross-motion, and ordered BBVA (and another bank) to "furnish to plaintiff's counsel

full and complete answers to the information subpoenas served on each for the Republic of Cuba, its agencies and instrumentalities The responses shall include information covering [BBVA's] operations and business in the custody or control of the bank's offices, inside and outside the United States;" and

WHEREAS, on September 24, 2014, BBVA moved for reconsideration of this Court's September 10, 2014 order; and

WHEREAS, on March 17, 2015, this Court denied BBVA's motion for reconsideration, and ordered that "BBVA shall furnish to Plaintiff's counsel full and complete answers to the information subpoenas served on it for the Republic of Cuba, its agencies, and instrumentalities, within 30 days of this Opinion and Order. The responses shall include information covering BBVA's operations and business in the custody or control of the bank's offices, inside and outside the United States;" and

WHEREAS, BBVA appealed to the United States Court of Appeals for the Second Circuit from this Court's orders dated September 10, 2014 and March 17, 2015 (together, the "Discovery Orders"); and

WHEREAS, on April 3, 2015, BBVA moved for a stay of discovery pending BBVA's appeals from the Discovery Orders; and

WHEREAS, on June 4, 2015, this Court denied BBVA's motion for a stay of discovery pending BBVA's appeals and ordered that "BBVA shall have 20 days from the date of this Order to respond to Vera's information subpoenas, or to seek a stay from the Court of Appeals;" and

WHEREAS, on September 8, 2015, the Court of Appeals dismissed BBVA's appeals for lack of appellate jurisdiction; and

WHEREAS, BBVA has not produced, and refuses to produce, further information in response to the Subpoena; and

WHEREAS, Vera moves to have to BBVA held in contempt of the Court's Discovery Orders; and

WHEREAS, BBVA opposes that motion and incorporates by reference and preserves its contentions previously advanced in opposition to the Court's Discovery Orders;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. BBVA is hereby found, and adjudged, in civil contempt of this Court's Discovery Orders.
2. BBVA is hereby fined in the amount of \$1.00 (one dollar) per day, payable to the Clerk of the Court, commencing on the day of the entry of this Order and Judgment and continuing until either (a) BBVA purges itself of this contempt or (b) this Order and Judgment is reversed, vacated or modified.
3. Payment of the fine imposed by paragraph 2 of this Order and Judgment is hereby stayed pending final determination of a timely appeal by BBVA from this Order and Judgment.
4. This Court retains jurisdiction of this matter for all further proceedings to enforce the Discovery Orders and contempt sanctions against BBVA (a) should BBVA not appeal from this Order and Judgment, or (b) pursuant to the mandate of the Court of Appeals upon remand from that Court should BBVA appeal.

Dated: New York, New York
April 19, 2016

ENTERED:


Hon. Alvin K. Hellerstein
U.S.D.J.